

FIRST REGULAR SESSION

SENATE BILL NO. 548

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Read 1st time March 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1963S.01I

AN ACT

To amend chapter 621, RSMo, by adding thereto fifteen new sections relating to a state central hearing agency, with an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 621, RSMo, is amended by adding thereto fifteen new sections, to be known as sections 621.500, 621.503, 621.506, 621.509, 621.512, 621.515, 621.518, 621.521, 621.524, 621.527, 621.530, 621.533, 621.536, 621.539 and 621.542, to read as follows:

621.500. 1. This section does not apply to:

- (1) An agency of the legislative branch of the state government; or**
- (2) An agency of the judicial branch of the state government.**

2. Except as provided in subsection 1 of this section, this section shall apply to each agency that employs or engages one or more hearing officers or administrative law judges, either full or part-time, to adjudicate contested cases.

621.503. 1. The office of administrative hearings is created as a type III agency, as defined in the Reorganization Act of 1974 within the office of administration, for the purpose of separating the adjudicatory function from the investigatory, prosecutory and policymaking functions of agencies in the executive branch. Administrative law judges shall be selected and appointed by the governor upon screening and recommendation of a judicial nominating commission.

2. The hearing officers and administrative law judges, employed as of January 1, 2006, of the agencies to which this section applies shall be transferred to and shall become employees of the office of administrative hearings.

621.506. 1. Except as provided herein, the office shall administer the resolution of all contested cases.

2. Upon referral by an agency, one or more administrative law judges shall administer the resolution of the matters referred.

621.509. 1. The office shall be headed by a chief administrative law judge

selected by the governor, with the advice and consent of the senate, to serve a term of four years, who may be removed only for good cause following notice, and an opportunity for an adjudicative hearing and shall continue in office until a successor is appointed.

2. The chief administrative law judge shall:

(1) Take an oath of office as required by law prior to the commencement of duties;

(2) Devote full time to the duties of the office and shall not engage in the practice of law;

(3) Be eligible for reappointment;

(4) Be licensed to practice law in the state and admitted to practice for a minimum of five years;

(5) Have the powers and duties specified in this section; and

(6) Be subject to the code of conduct for administrative law judges.

3. The chief administrative law judge may employ any necessary staff subject to appropriations.

621.512. 1. The chief administrative law judge shall:

(1) Supervise the office of administrative hearings;

(2) Assign administrative law judges in any case referred to the office;

(3) Protect and ensure the decisional independence of each administrative law judge;

(4) Establish and implement standards and specialized training programs and provide materials for administrative law judges;

(5) Provide and coordinate continuing education programs and services for administrative law judges, including research, technical assistance, technical and professional publications, compile and disseminate information, and advise of changes in the law relative to their duties;

(6) Adopt rules to implement this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void;

(7) Adopt a code of conduct for administrative law judges;

(8) Monitor the quality of state administrative hearings through the

provision of training, observation, feedback, and when necessary, discipline of administrative law judges who do not meet appropriate standards of conduct and competence, subject to the provisions of subdivision (4) of subsection 1 of section 621.515; and

(9) Submit an annual report on the activities of the office to the governor and to the general assembly.

2. The chief administrative law judge may:

(1) Serve as an administrative law judge in a contested case;

(2) Furnish administrative law judges on a contractual basis to governmental entities other than those required to use their services;

(3) Accept and expend funds, grants, bequests, and services which are related to the purpose of the office from any public or private source;

(4) Enter into agreements and contracts with any public or private agencies or educational institutions; and

(5) Create specialized subject matter divisions within the office.

621.515. 1. An administrative law judge shall:

(1) Take an oath of office as required by law prior to the commencement of duties;

(2) Be admitted to practice law in the state for a minimum of five years;

(3) Be subject to the requirements and protections of section 105.969, RSMo;

(4) Be removed, suspended, demoted, or subject to disciplinary or adverse actions only for good cause, after notice and an opportunity to be heard in an administrative procedure as provided in chapter 536, RSMo, and a finding of good cause by an impartial hearing officer;

(5) Be subject to a reduction in force only in accordance with established, objective civil service or merit system procedures;

(6) Not perform duties inconsistent with the duties and responsibilities of an administrative law judge;

(7) Devote full time to the duties of the position and shall not engage in the practice of law;

(8) Be subject to administrative supervision by the chief administrative law judge; and

(9) Be subject to the code of conduct for administrative law judges.

2. An administrative law judge shall not be responsible to or subject to the supervision, direction, or direct or indirect influence of an officer, employee, or agent engaged in the performance of investigatory, prosecutory, or advisory functions for an agency.

621.518. 1. All agencies of state government shall cooperate with the chief

administrative law judge in the discharge of the duties of the office.

2. Except in arbitration or similar proceedings as provided by law or in this section or in regulations adopted under this act, an agency may not select or reject a particular administrative law judge for a particular proceeding.

621.521. If the office is unable to assign an administrative law judge in response to an agency referral, the chief administrative law judge shall designate in writing an individual to serve as an administrative law judge in a particular proceeding before the agency if the individual meets the qualifications for an administrative law judge established by the office and is subject to the Code of Judicial Conduct.

621.524. An administrative law judge shall have the power to:

- (1) Issue subpoenas;
- (2) Administer oaths;
- (3) Control the course of the proceedings;
- (4) Engage in or encourage the use of alternative dispute resolution methodologies as appropriate;
- (5) Order a party, a party's attorney, or other authorized representative, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay; and
- (6) Perform other necessary and appropriate acts in the performance of duties.

621.527. 1. The assigned administrative law judge shall render the final decision of the agency not subject to agency review, in all appropriate hearings.

2. Where a matter is referred to the office by an agency, the referring agency shall take no further adjudicatory action with respect to the proceeding, except as a party litigant, as long as the office has jurisdiction over the proceeding. Nothing in this subsection shall be construed to prevent an appropriate interlocutory review by the agency nor an appropriate termination or modification of the proceeding by the agency.

621.530. Judicial review of hearing office decisions shall occur in accordance with sections 536.100 to 536.140, RSMo.

621.533. In addition to the restrictions provided in chapter 105, RSMo, no administrative law judge or chief administrative law judge shall, for two years after termination of his or her employment, perform any service for compensation for any person, firm, or corporation to influence the decision or action of the office; provided, however, that he or she may, after termination of his or her office or employment, perform such service for consideration in any adversary

proceeding or in the preparation or filing of any public document or conference thereon unless he or she participated directly in that matter or in the receipt or analysis of that document while he or she was serving as a member.

621.536. Notwithstanding other provisions of the law to the contrary, any internal hearing procedure established by law for any department or agency shall be held by the office of administrative hearings in lieu of the department or agency after January 1, 2006. All other procedures relating to such hearings shall be those established in law for the department or agency and the issue in question.

621.539. After January 1, 2006, all references in the revised statutes of Missouri to this chapter, or any section within this chapter, shall be interpreted to refer to sections 621.500 to 621.550, governing the office of administrative hearings.

621.542. Sections 621.500 to 621.539 shall become effective on January 1, 2006.

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